

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Maurice McNeil,

Plaintiff,

vs.

City of Pittsburgh, Pittsburgh Bureau of
Police – Department of Public Safety,
Nathan Harper, Allegheny County, Dan
Onorato, Stephen A. Zappala, Jr.,
Allegheny County District Attorney
Detectives, Terrance O’Leary, Carl
Schradder, William Friburger, Robert L.
Kavals, Eric J. Harper, Wesley McClellan,
Phillip Mercurio, Michael Horgan, James
Stocker,

Defendants.

Civil Action No. 09-825

AMBROSE, Senior District Judge

OPINION
and
ORDER OF COURT

I. BACKGROUND

Plaintiff, Maurice McNeil (“McNeil” or “Plaintiff”), filed a Complaint against Defendants City of Pittsburgh, Pittsburgh Bureau of Police – Department of Public Safety, Nathan Harper, Allegheny County, Dan Onorato, Stephen A. Zappala, Jr., Allegheny County District Attorney Detectives, Terrance O’Leary, Carl Schradder, William Friburger, Robert L. Kavals, Eric J. Harper, Wesley McClellan, Phillip Mercurio, Michael Horgan, and James Stocker, in the Court of Common Pleas of Allegheny County on or about May 29, 2009. (Docket No. 1, Ex. A). On June 24, 2009, Defendants City of Pittsburgh, Pittsburgh Bureau of Police – Department of Public Safety, and Nathan Harper (“City Defendants”) removed the case to this Court. (Docket

No. 1). On July 6, 2009, the City Defendants filed an Answer to the Complaint and Affirmative Defenses. (Docket No. 2).

On October 31, 2011, Defendants City of Pittsburgh Police Officers, Carl Shradder (Carlos Shrader), William Friburger, Robert L. Kavals, Eric J. Harper (Harpster), and Phillip Mercurio ("Officer Defendants"), filed a Motion to Dismiss pursuant to 12(b)(5) arguing that Plaintiff failed to serve sufficient process on them. (Docket No. 3). At a status conference held in this case on November 7, 2011 (Docket No. 4), Plaintiff's counsel agreed that the only service made was on the City Defendants. Plaintiff's counsel also represented to the Court that he is currently unable to locate Plaintiff. Plaintiff did not file any response to the Motion to Dismiss.

On November 21, 2011, I granted the Officer Defendants' Motion to Dismiss and dismissed the Officer Defendants from this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Docket No. 5). On that same date, I also issued an Order to Show Cause why Defendants Allegheny County, Dan Onorato, Stephen A. Zappala, Jr., Allegheny County District Attorney Detectives, Terrance O'Leary, Wesley McClellan, Michael Horgan, and James Stocker ("County Defendants") should not be dismissed for failure to serve pursuant to Rule 4(m). (Docket No. 6). The Order to Show cause directed Plaintiff to respond by November 29, 2011; however, Plaintiff failed to do so. For the reasons set forth below the County Defendants will be dismissed.

II. LEGAL ANALYSIS

Rule 4(m) of the Federal Rules of Civil Procedure governs the time limits for service of a complaint and provides, in relevant part:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. . . .

Fed. R. Civ. P. 4(m). In this case, I served upon Plaintiff a Rule to Show Cause why the County Defendants should not be dismissed for failure to comply with Rule 4(m). As set forth above, Plaintiff failed to respond to my Order. In addition, Plaintiff's counsel acknowledged at the November 7, 2011 status conference that service in this case was made only on the City Defendants. Because Plaintiff is well outside Rule 4(m)'s 120-day deadline for service, and because Plaintiff has failed to show good cause for this failure of service, all claims against the County Defendants must be dismissed without prejudice.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Maurice McNeil,

Plaintiff,

vs.

City of Pittsburgh, Pittsburgh Bureau of
Police – Department of Public Safety,
Nathan Harper, Allegheny County, Dan
Onorato, Stephen A. Zappala, Jr.,
Allegheny County District Attorney
Detectives, Terrance O’Leary, Carl
Schradder, William Friburger, Robert L.
Kavals, Eric J. Harper, Wesley McClellan,
Phillip Mercurio, Michael Horgan, James
Stocker,

Defendants.

Civil Action No. 09-825

AMBROSE, Senior District Judge

ORDER OF COURT

AND NOW, this 7th day of December, 2011, it is ordered that the above-captioned action against Defendants Allegheny County, Dan Onorato, Stephen A. Zappala, Jr., Allegheny County District Attorney Detectives, Terrance O’Leary, Wesley McClellan, Michael Horgan, and James Stocker, is hereby dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
Senior U.S. District Judge